

APR 06 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HECTOR GARCIA-MUNOZ,

Defendant - Appellant.

No. 05-30300

D.C. No. CR-04-00221-RHW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, US District Judge, Presiding

Submitted March 8, 2006^{**}
Seattle, Washington

Before: O'SCANNLAIN, SILVERMAN, and GOULD, Circuit Judges.

Hector Garcia-Munoz appeals from his 46-month sentence imposed following his guilty plea conviction to re-entering the United States after deportation, in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 28 U.S.C. § 1291. The facts are known to the parties and will not be repeated here.

The district court did not err by relying on the PSR accompanied by a computer-generated certified statement of conviction and court docket entries as establishing Garcia-Munoz's prior convictions for marijuana possession and D.U.I. absent any claim that the records were inaccurate or not genuine. *See United States v. Romero-Rendon*, 220 F.3d 1159, 1163 (9th Cir. 2000).

The district court did not err by imposing an increased sentence pursuant to 8 U.S.C. § 1326(b)(2) based on the fact of a prior conviction not charged in the indictment, nor admitted by the defendant, nor proved to a jury. *Almendarez-Torres v. United States*, 523 U.S. 224 (1998); *see United States v. Weiland*, 420 F.3d 1062, 1079 n. 16 (9th Cir. 2005) (holding that *United States v. Booker*, 543 U.S. 220 (2005) and *Shepard v. United States*, 125 S. Ct. 1254 (2005) did not overrule *Almendarez-Torres*).

AFFIRMED.